

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Amendment)

5 907 KAR 20:045~~[907 KAR 1:665]~~. Special income requirements for hospice and
6 home and community based services ~~[(HCBS)]~~.

7 RELATES TO: KRS 205.520, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C. 1396a,
8 n

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services
11 has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the
12 cabinet, by administrative regulation, to comply with a requirement that may be imposed
13 or opportunity presented by federal law to qualify for federal Medicaid funds~~[for the~~
14 ~~provision of medical assistance to Kentucky's indigent citizenry]~~. This administrative
15 regulation establishes special income requirements for home and community based
16 waiver and hospice services, except for individuals for whom a modified adjusted gross
17 income is the Medicaid eligibility income standard or former foster care individuals
18 between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while
19 receiving Medicaid coverage.

20 Section 1. ~~[Definitions. (1) "Basic maintenance" means the amount of income that may~~
21 ~~be retained by the applicant for living and personal expenses.~~

(2) "~~Categorically needy~~" means an individual with income below 300 percent of the supplemental security income (SSI) standard who has been receiving hospice or HCBS for thirty (30) consecutive days.

(3) "~~HCBS~~" means home and community based services.

(4) "~~Institutionalized~~" means residing in a nursing facility or receiving hospice or HCBS benefits.

(5) "~~Special income level~~" means the amount which is 300 percent of the SSI standard.

(6) "~~SSI~~" means the Social Security Administration Program called supplemental security income.

(7) "~~SSI general exclusion~~" means the twenty (20) dollars disregard from income allowed by the Social Security Administration in an SSI determination.

(8) "~~SSI standard~~" means the amount designated by the Social Security Administration as the federal benefit rate.

~~Section 2.] Special Provisions for Recipients Participating in a 1915(c) Home and Community Based Services~~the HCBS] Waiver Program. (1) Medicaid eligibility for a recipient receiving 1915(c) home and community based services~~[participant under HCBS]~~ shall be determined if necessary to establish eligibility for Medicaid benefits for a case with income in excess of the basic maintenance standard taking into consideration the special provisions established in;

(a) This section; and

(b) 907 KAR 20:035~~[in 907 KAR 1:655]~~.

(2) Income protected for the basic maintenance of a 1915(c) home and community

1 based services waiver ~~[an HCBS]~~ program participant who is eligible as medically
2 needy or under the special income level established in this section shall be the
3 standard used for an individual in the Federal SSI Program in addition to the SSI
4 general exclusion from income.

5 (3) A 1915(c) home and community based services waiver~~[An HCBS]~~ program
6 participant who participates in a 1915(c) home and community based services
7 waiver~~[the HCBS]~~ program for thirty (30) consecutive days, including the actual days of
8 institutionalization within that period, and who has income which does not exceed the
9 special income level shall be determined to be eligible as categorically needy under the
10 special income level.

11 (4) If a Supports for Community Living (SCL) Program participant has income in
12 excess of the special income level, eligibility of the participant shall be determined on a
13 monthly spenddown basis with the cost of SCL services projected.

14 (5) Institutional deeming rules shall apply in accordance with 907 KAR 20:035~~[907~~
15 ~~KAR 1:655]~~.

16 (6)(a) In the posteligibility determination of available income, the basic maintenance
17 needs allowance shall include a mandatory withholding from income.

18 (b) Mandatory withholdings shall:

19 1.~~[(a)]~~ Include state and federal taxes; and

20 2.~~[(b)]~~ Not include child support, alimony, or a similar payment resulting from an
21 action by the recipient.

22 (7) A veteran or the spouse of a veteran who is receiving services in a home and
23 community based waiver program and who is receiving a Veterans Affairs~~[Veteran's~~

1 ~~Administration (VA)~~ benefit shall have ninety (90) dollars excluded from the eligibility
2 and posteligibility determination process.

3 (8) Veterans Affairs~~Administration~~ payments for unmet medical expenses (UME)
4 and aid and attendance (A&A) shall be excluded in a Medicaid eligibility and
5 posteligibility determination for a veteran or the spouse of a veteran receiving services
6 from a home and community based waiver program.

7 (9) Income placed in a qualifying income trust established in accordance with 42
8 U.S.C. 1396p(d)(4) and 907 KAR 20:030~~[907 KAR 1:650]~~, Section 2(5)~~[3(5)]~~, shall not
9 be excluded in the posteligibility determination.

10 Section 2~~[3]~~ Special Provisions for Hospice Recipients. Medicaid eligibility for a
11 participant in the Medicaid Hospice Program shall be determined in accordance with the
12 provisions ~~[by taking into consideration the special provisions contained]~~ in this section.

13 (1) Income protected for basic maintenance shall be:

14 (a) The SSI standard and the SSI general exclusion from income for the hospice
15 participant in the posteligibility determination for a noninstitutionalized individual eligible
16 on the basis of the special income level;

17 (b) The usual medically needy standard established in 907 KAR 20:020~~[907 KAR~~
18 ~~1:640]~~, Section 1~~[2]~~, plus the SSI general exclusion for a noninstitutionalized medically
19 needy participant, who shall spenddown on a quarterly basis;

20 (c) The medically needy standard for the appropriate family size plus the SSI general
21 exclusion for the institutionalized medically needy;

22 (d) Forty (40) dollars per month for the hospice participant institutionalized in a long-
23 term care facility;

(e) For a veteran or the spouse of a veteran who is receiving services from a hospice and who is receiving a Veterans Affairs~~Veteran's Administration (VA)~~ benefit, ninety (90) dollars, which shall be excluded from the eligibility and posteligibility determination process; or

(f) The amount of Veterans Affairs~~Administration~~ payments for unmet medical expenses (UME) and aid and attendance (A&A), which shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a hospice.

(2) If eligibility is determined for an institutionalized spenddown case, the attributed cost of care against which available income of the hospice participant shall be applied shall be the hospice routine home care per diem for the hospice providing care as established by 42 U.S.C. 1395f(i) plus the private pay rate for the nursing facility.

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual if the recipient is eligible based on the special income level.

(4) A hospice participant shall be eligible for a benefit based on this section if he has elected coverage under the Medicaid Hospice Program rather than the regular Medicaid Program.

(5) Institutional deeming rules shall apply in accordance with 907 KAR 20:035~~907 KAR 1:655~~ with regard to the categorically needy including a participant eligible on the basis of the special income level.

(6) Community deeming procedures shall be used in accordance with 907 KAR 20:040~~907 KAR 1:660~~ for a noninstitutionalized hospice recipient who is:

(a) A medically needy individual, who shall spenddown on a quarterly basis; and

(b) Not eligible under the special income level.

(7)(a) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a mandatory withholding from income.

(b) Mandatory withholdings shall:

1. ~~(a)~~ Include state and federal taxes; and

2. ~~(b)~~ Not include child support, alimony, or a similar payment resulting from an action by the recipient.

(8) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030~~[907 KAR 1:650]~~, Section 2(5)~~[3(5)]~~, shall not be excluded in the posteligibility determination.

Section 3. Applicability. (1) The provisions and requirements of this administrative regulation shall not apply to an individual:

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:

(a) A child under the age of nineteen (19) years, excluding children in foster care;

(b) A caretaker relative with income up to 133 percent of the federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the federal poverty level,

including the postpartum period up to sixty (60) days after delivery;

1 (d) An adult under age sixty-five (65) with income up to 133 percent of the federal
2 poverty level who:

3 1. Does not have a dependent child under the age of nineteen (19) years; and

4 2. Is not otherwise eligible for Medicaid benefits; or

5 (e) A targeted low income child with income up to 150 percent of the federal poverty
6 level.

907 KAR 20:045

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

907 KAR 20:045

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on November 21, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2013 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business December 2, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 20:045

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid special income requirements for 1915(c) home and community based waiver services and hospice services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment establishes that the requirements do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid income eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. The MAGI individuals include children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. The amendment also deletes the definitions and contains language and formatting revisions to comply with KRS Chapter 13A requirements.
 - (b) The necessity of the amendment to this administrative regulation: The MAGI-related amendment and former foster care individuals' amendment is necessary to comply with Affordable Care Act mandates. Deleting the definitions is necessary as DMS is creating a definitions administrative regulation for Chapter

- 20 – the new chapter which will house all Medicaid eligibility administrative regulations. Language and formatting amendments are necessary to comply with KRS Chapter 13A standards.
- (c) How the amendment conforms to the content of the authorizing statutes: The MAGI-related amendment and former foster care individuals' amendment conforms to the content of the authorizing statutes by complying with Affordable Care Act mandates. The language and formatting amendments conform to KRS Chapter 13A standards.
 - (d) How the amendment will assist in the effective administration of the statutes: The MAGI-related amendment and former foster care individuals' amendment will assist in the effective administration of the authorizing statutes by complying with Affordable Care Act mandates. The language and formatting amendments will assist in the effective administration of the authorizing statutes by complying with KRS Chapter 13A standards.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment requires no action to be taken by affected individuals.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost on the affected individuals.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals exempt from the special income requirements in the administrative regulation will benefit due to the clarification that the requirements do not apply to them.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the requirements established in this administrative regulation.
 - (b) On a continuing basis: The response in paragraph (a) also applies here.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement the amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is applied in the sense that the requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income or to former foster care individuals as the Affordable Care Act prohibits applying the requirements to these individuals.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 20:045

Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).
2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to “formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.”

3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals.

Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard.

States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified

adjusted gross income standard taking effect.

42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates a new mandated eligibility group comprised of former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage and bars the application of an income standard or resource standard to the individuals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not applied.

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FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 20:045

Agency Contact: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.
 - (d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): .

Expenditures (+/-):